

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

<b>DePuy Mitek Inc.,</b>	)	
<b>a Massachusetts Corporation</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL ACTION NO. 04-12457 PBS</b>
	)	
<b>Arthrex Inc.,</b>	)	
<b>a Delaware Corporation, and</b>	)	
	)	
<b>Pearsalls Limited,</b>	)	
<b>a Private Limited Company of the</b>	)	
<b>United Kingdom,</b>	)	
	)	
<b>Defendant.</b>	)	

**SUPPLEMENTAL JOINT PROPOSED STIPULATED FACTS**

DePuy Mitek, Arthrex, Inc., and Pearsalls Ltd. jointly submit these additional stipulated facts, in supplement to their Joint Proposed Stipulated Facts submitted as Ex. A to their Pre-Trial Memo filed on July 23, 2007.

**Stipulated Fact #52**

Arthrex catalog numbers AR-7200, AR-7201, AR-7202, AR-7203, AR-7204, AR-7205, AR-7205T, AR-7207, AR-7209, AR-7209SN, AR-7209T, AR-7210, AR-7211, AR-7219, AR-7220, AR-7221, AR-7222, AR-7223, AR-7225, AR-7227-01, AR-7227-02, AR-7232-01, AR-7232-02, AR-7232-03, AR-7237, AR-7250, AR-7251, AR-1320BNF, AR-1322BNF, AR-1322-75SF, AR-1322-752SNF, AR-1915SNF, AR-1920SNF, AR-1322SX, AR-1322SXF, AR-1324B, AR-1324BF, AR-1324BF-2, AR-1324BNF, AR-1324HF, AR-1324SF, AR-1934BF, AR-1934BF-2, AR-1934BFT, AR-1934BFX, AR-1934BNF, AR-1934BLF, AR-1915SF, AR-1920BF, AR-1920BF-37, AR-1920BFT, AR-1920BN, AR-1920BNF, AR-1920BNP, AR-

1920BT, AR-1920SF, AR-1920SFT, AR-1925BF, AR-1925BFSP, AR-1925BNF, AR-1925BNP, AR-1925SF, AR-1927-BF, AR-1927BNF, AR-1928SF, AR-1928SF-2, AR-1928SNF, AR-1928SNF-2, AR-2225S, and AR-2226S contain FiberWire or TigerWire sutures, each suture has a core of yarns of ultra high molecular weight polyethylene; a braided heterogeneous cover constructed of yarns (multiple filaments) of ultra high molecular weight polyethylene (UHMWPE) and polyethylene terephthalate (PET); in the cover, at least one yarn of ultra high molecular weight PE is in direct intertwining contact with a PET yarn; and coated with Med-2174, a silicone coating. *See* Joint Proposed Stipulated Facts (filed as Exhibit A to Joint Pretrial Memorandum) at Stip. Fact Nos. 12-18; Dreyfuss 9/16/05 Dep. at 56:9-11; 56:18-24; 89:25-90:6; 42:14- 43:2; 100:20- 101:4; 108: 21-23; 113:24- 114:3; 114:4-8; 114:9-13; 114:14-18; 114:19-23; 114:24- 115:2; 115:14-18; 115:19-23; 115:24- 116:3; 116:4-8; 116:25- 117:4; 117:5-9; 117:16-20; 117:23- 118:2; 118:10-14; 118:15-19; 118:21-25; 119:1-6; 119:7-11; 119:19-23; 120:1-5; 120:16-20; 121:1-5; 121:6-10; 121:16-20; 121:21-25; 122:16-21; 123:19-23; 123:24-124:4; 124:22-125:1; 124:10-14; 125:2-6; 125:9-13; 125:14-18; 125:14-18; 125:14-18; 126:4-8; 126:9-14; 126:15-19; and 126:15-19.

### **Stipulated Fact #53**

Arthrex catalog numbers AR-7228, 7230-01, 7230-02, 7229-12, and 7229-20 contain a 4-0 FiberWire suture. Each suture has a braided heterogeneous cover constructed of yarns (multiple filaments) of ultra high molecular weight polyethylene (UHMWPE) and polyethylene terephthalate (PET); in the cover, at least one yarn of ultra high molecular weight PE is in direct intertwining contact with a PET yarn; and coated with Med-2174, a silicone coating. *See* Joint Proposed Stipulated Facts (filed as Exhibit A to Joint Pretrial Memorandum) at Stip. Fact Nos. 12-18; Dreyfuss 9/16/05 Dep. at 55:21-23; 125:19-23; and 125:24- 126:3.

**Stipulated Fact #54**

The parties agree that FiberWire US 2 will be tried as representative of the product numbers identified above in Stipulated Facts #52 and #53 and that any infringement determination with respect to FiberWire US 2 would apply to the identified product codes as well as to TigerWire.

**Stipulated Fact #55**

If it is determined that FiberWire infringes claim 1 of Mitek's 446 Patent, then the parties agree that FiberWire also infringes claims 2, 8, 9, and 12 of Mitek's 446 Patent. Conversely, if FiberWire is found to not infringe claim 1 of Mitek's 446 Patent, then the parties agree that claims 2, 8, 9, and 12 of Mitek's 446 Patent are not infringed.

**Stipulated Fact #56**

FiberWire and TigerWire have been manufactured according to the procedures set forth in DePuy Mitek Ex. 279 (Hallet 1/11/06 Dep. at 12:21-13:9; 13:15-19, DMI 279).

**Stipulated Fact #57**

FiberWire and TigerWire have been manufactured according to the procedures set forth in DePuy Mitek Ex. 281 (Hallet 1/11/06 Dep. at 14:8-16; 19:10-13).

**Stipulated Fact #58**

RK Manufacturing does nothing to alter the construction of the braid it receives from Pearsalls and sells to Arthrex (Ponton Dep. at 74:16-21).

**Stipulated Fact #59**

DePuy Mitek Deposition Exhibit 316 sets forth specification tolerances for FiberWire (Hallet 1/12/06 Dep. at 237:9-11; 240:21-24).

**Stipulated Fact #60**

DePuy Mitek Deposition Exhibit 318 is a matrix for the developmental and commercial FiberWire and TigerWire products (Hallet 1/12/06 Dep. at 245:21-25; DMI Ex. 318).

**Stipulated Fact #61**

The FiberWire sample denoted as ARM25904 (Mitek Ex. 400, Arthrex Ex. 1192) underwent the FiberWire scouring and dyeing processes and all FiberWire manufacturing processes that are before the dyeing process, but no other FiberWire manufacturing processes.

**Stipulated Fact #62**

The FiberWire sample denoted as ARM25903 (Mitek Ex. 399, Arthrex Ex. 1191) underwent all FiberWire manufacturing processes. It is the same as US 2 commercial FiberWire.

**Stipulated Fact #63**

The person of ordinary skill in the art is a person having an undergraduate degree in engineering or science and several years (e.g., approximately 3-5) experience with manufacturing and/or processing of fibers and sutures which can be used for biomedical applications (Expert Report of Dr. Debi Prasad Mukherjee Concerning Invalidity of U.S. Patent No. 5,314,446 at 10).

**Stipulated Fact #64**

The FiberWire sample, denoted as DePuy Mitek Deposition Ex. 282, underwent all FiberWire manufacturing processes prior to the wind to skein process and the scouring process, but no other FiberWire manufacturing processes (Hallet 1/11/06 Dep. at 33:3-34:7; 36:16-18).

**Stipulated Fact #65**

The FiberWire sample, denoted as DePuy Mitek Deposition Ex. 283, underwent the FiberWire braiding process and all FiberWire manufacturing processes that are before the braiding process, but no other FiberWire manufacturing processes (Hallet 1/11/06 Dep. at 35:10-13; DMI Ex. 279).

Counsel for Plaintiff

By: /s/ Erich M. Falke

DEPUY MITEK, INC.,

Daniel J. Gleason (BBO #194900)  
Heather Repicky (BBO #663347)  
NUTTER MCCLENNEN & FISH LLP  
World Trade Center West  
155 Seaport Boulevard  
Boston, MA. 02210-2604  
(617) 439-2000  
Facsimile: (617) 310-9000

Dianne B. Elderkin  
Lynn A. Malinoski  
Michael J. Bonella  
Erich M. Falke  
WOODCOCK WASHBURN LLP  
Cira Centre - 12th Floor  
2929 Arch Street

Counsel for Defendants

By: /s/ Salvatore P. Tamburo

ARTHREX, INC. and PEARSALLS LTD.,

Christopher Weld, Jr. (BBO # 522230)  
Raymond P. Ausrotas (BBO # 640315)  
TODD & WELD LLP  
28 State Street, 31st Floor  
Boston, MA 02109  
(617) 720-2626  
Facsimile: (617) 227-5777

Charles W. Saber  
Stephen A. Soffen  
Salvatore P. Tamburo  
DICKSTEIN SHAPIRO LLP  
1825 Eye Street NW  
Washington, D.C. 20006-5403  
(202) 420-2200

Philadelphia, PA 19104  
(215) 568-3100  
Facsimile: (215)568-3439

Facsimile: (202) 420-2201

Dated: August 6, 2007

Dated: August 6, 2007